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7 BEFORE THE INSURANCE COMMISSIONER
8 OF THE STATE OF WASHINGTON

9 In the Matter of the Application
10 regarding the Conversion and
11 Acquisition of Control of Premera Blue
12 Cross and its Affiliates.

No. G 02-45

MOTION TO CLARIFY
SEVENTEENTH ORDER AND
DECLARE FORM A COMPLETE

13
14 PREMERA and Premera Blue Cross (collectively, "Premera") respectfully move
15 the Commissioner for an order declaring Premera's Form A Statement complete. Premera
16 appreciates that the Commissioner has directed the OIC Staff and consultants to consider
17 the Stock Ownership Plan submitted on October 17, 2003. Premera respectfully suggests
18 that the plan be addressed in a supplemental report, to be issued before the public hearings
19 in December. Premera also requests clarification or amendment of a portion of the
20 Seventeenth Order.

21 FACTS RELEVANT TO MOTION

22 On September 10, 2003, pursuant to the order entered by Judge Casey on
23 September 5, 2003, the Commissioner (through counsel) gave Premera a Schedule of
24 Deficiencies identifying "current deficiencies in Premera's Form A Statement that were
25 identified prior to November 26, 2002." Letter from Christina G. Beusch to Robert

MOTION TO CLARIFY SEVENTEENTH ORDER
AND DECLARE FORM A COMPLETE - 1

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1 Mitchell and Carol Arnold (September 10, 2003). Ms. Beusch's cover letter stated:
2 "Pursuant to the [Court's] Order, the 60-day timeframe within which the Commissioner
3 shall make a decision will not begin to run until the deficiencies identified in the Schedule
4 are corrected."

5 The Schedule identified three alleged deficiencies: a November 2001 survey
6 conducted by Accenture; a description of stock ownership plans; and schedules of assets
7 and assumed liabilities to be transferred to Premera's proposed Alaska subsidiary. The
8 first item was withdrawn. *See* Insurance Commissioner's Memorandum Regarding
9 Deficiencies in Premera's Form A Statement at 3, n. 3 (September 12, 2003). The second
10 item requested specific terms and provisions of stock plans that Premera intended to adopt
11 within the limitations and restrictions set forth in Exhibit G-10 to the Form A Statement.
12 The third item requested information regarding the amount and nature of the assets and
13 liabilities that will be withdrawn from the company and transferred to its wholly owned
14 subsidiary as a result of the transaction.

15 Premera moved promptly to address the stock plan issue after learning the nature
16 of the information sought by the OIC Staff's consultants.¹ The Board's compensation
17 consultant (Mercer Human Resource Consulting) prepared recommendations to the Board;
18 the Board deliberated the matter at its meeting on October 5, 2003; and the Compensation
19 Committee and the Board convened special meetings on October 17, 2003, to finalize the
20 requested plan. Declaration of John P. Domeika in Support of Motion to Clarify
21 Seventeenth Order and Declare Form A Complete ("Domeika Decl."), ¶¶ 2-3. That same
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24 ¹ The desired information was described generally in the Declaration of Patrick H. Cantilo
25 (signed Sept. 11, 2003) and with greater specificity in the draft consultant reports that
Premera received on October 3, 2003.

1 day, Premera hand-delivered the newly adopted stock ownership plan to the OIC Staff and
2 sent it, via Federal Express, to the OIC Staff's consultants.² *Id.*, ¶ 4 and Exhibits A & B.

3 With respect to the schedules of assets and assumed liabilities to be transferred to
4 Premera's new Alaska subsidiary, Premera pointed out before Judge Casey that it was
5 impossible to be precise about such matters prior to the eve of closing, since the amounts
6 of assets and liabilities to be transferred will be revealed by a balance sheet "snapshot" of
7 Premera's Alaska operations as of the date that the transaction is actually consummated.
8 *See* Declaration of Katharine M. Cramer (September 11, 2003); Domeika Decl. ¶ 5.³ On
9 October 28, 2003, Premera sent the OIC Staff a letter reiterating this point but also noting
10 where in the Form A Statement the amount and nature of projected assets and liabilities of
11 the Alaska subsidiary, as of various dates, can be found.⁴ Domeika Decl., ¶ 6 & Exhibit
12 C. As this letter points out, the schedules to the transfer of assets agreement will contain
13 the same categories of assets and liabilities (as determined on a statutory accounting basis)
14 as are already on file in the Form A. *Id.*, ¶ 6 & Exhibit C.

15 ² The cover letter accompanying the plan reiterated Premera's view that a stock ownership
16 plan is not a required part of a Form A filing. In its submissions to Judge Casey, Premera
17 pointed out that Exhibit G-10 was submitted on October 25, 2002, in response to an
18 identification of missing information in Premera's filing as of September 27, 2002. The
19 OIC Staff's follow-up list of asserted deficiencies, dated November 19, 2002, did not refer
20 to stock plans. The States' Consultants declared in December 2002 that Premera had
21 fully satisfied data requests WA 19, WA 105, and WA 107, all relating to description of
22 stock plans. *See* Declaration of Katharine M. Cramer (September 11, 2003); Declaration
23 of John B. Cake in Response to Schedule of Alleged Form A Deficiencies (September 11,
24 2003); *see also* Petitioners' Memorandum Regarding Schedule of Alleged Deficiencies
25 (September 11, 2003). Judge Casey did not make any determination on this issue.

³ After reviewing the supplemental Form A that Premera submitted on October 25, 2002,
the States' Consultants stated that Premera had given a "complete response" to data
requests B 138 and B 139, which had sought the schedules of assets and assumed
liabilities to be transferred to the Alaska subsidiary.

⁴ Exhibit A-6 of the Form A, Certificate of Authority Application for Premera Blue Cross
Blue Shield of Alaska Corp., Section 6, Subsection C, Pro-Forma Financial Statements,
Projections, and Assumptions (Statutory Basis), at p. 4, shows the nature and projected
amount of such assets and liabilities as of January 1, 2003, December 31, 2003, and
December 31, 2004.

MOTION TO CLARIFY SEVENTEENTH ORDER
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2 2. The Commissioner should clarify the Seventeenth Order.

3 Clarification of the Seventeenth Order is required in light of the statement (at p. 2,
4 lines 2-4) that "the terms of the proposed transaction that are the subject of review in these
5 proceedings are those submitted by Premera as of October 15, 2003." If this statement is
6 read as excluding from consideration the stock plan submitted on October 17, 2003, then
7 the Commissioner has created an appeal issue for Premera in light of his representation
8 before Judge Casey that "the 60-day timeframe within which the Commissioner shall
9 make a decision will not begin to run until the deficiencies identified in the Schedule are
10 corrected." If, conversely, the stock plan is considered notwithstanding this statement in
11 the Seventeenth Order, then an appeal issue may have been created for the Intervenors.

12 To avoid such results, Premera asks that the statement be revised as follows:

13 Therefore, the terms of the proposed transaction that are the necessary
14 subject of review in these proceedings the OIC Staff's expert reports due
October 27, 2003 are those submitted by Premera as of October 15, 2003.

15
16 CONCLUSION

17 The public interest as well as the interest of the parties favors clarity about the
18 subject of these proceedings. For the reasons set forth above, Premera asks the
19 Commissioner to (a) declare its Form A Statement complete; (b) direct the OIC
20 consultants to prepare a supplemental report on the Premera stock plan adopted October
21 17, 2003; and (c) revise the language of the Seventeenth Order as proposed above.

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MOTION TO CLARIFY SEVENTEENTH ORDER
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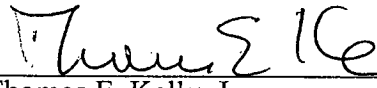
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DATED this 31st day of October, 2003.

Respectfully submitted,

PRESTON GATES & ELLIS LLP

By 
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MOTION TO CLARIFY SEVENTEENTH ORDER
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